

1 THE HONORABLE THOMAS S. ZILLY  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 BUNGIE, INC.,

10 Plaintiff,

11 v.

12 AIMJUNKIES.COM; PHOENIX  
13 DIGITAL GROUP LLC; DAVID  
14 SCHAEFER; JORDAN GREEN;  
15 JEFFREY CONWAY; and JAMES MAY,

Defendants.

No. 2:21-cv-811-TSZ

SUPPLEMENTAL DECLARATION OF  
WILLIAM C. RAVA IN SUPPORT OF  
PLAINTIFF BUNGIE, INC.’S REPLY IN  
SUPPORT OF ITS MOTION FOR  
SUMMARY JUDGMENT

**EXHIBIT 41  
FILED UNDER SEAL**

16 I, William C. Rava, declare as follows:

17 1. I am an attorney licensed to practice law before the courts of the State of  
18 Washington. I am a Partner at Perkins Coie LLP, and counsel in this action for Plaintiff Bungie,  
19 Inc. (“Bungie” or “Plaintiff”). I submit this declaration in support of Plaintiff Bungie, Inc.’s Reply  
20 in Support of Its Motion for Summary Judgment. I have personal knowledge of the facts stated  
21 herein and, if called upon, could and would testify competently thereto under oath.

22 2. Attached hereto as **Exhibit 37** are true and correct copies of excerpts of Bungie’s  
23 Objections and Responses to Phoenix Digital Group LLC’s First Set of Interrogatories dated  
24 September 12, 2022.

25  
26  
RAVA DECL. ISO BUNGIE’S REPLY ISO  
MOT. FOR SUMMARY JUDGMENT  
(No. 2:21-cv-811-TSZ) – 1

163375835.1

**Perkins Coie LLP**  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101-3099  
Phone: 206.359.8000  
Fax: 206.359.9000

3. Attached hereto as **Exhibit 38** are true and correct copies of excerpts of Bungie's Supplemental Objections and Responses to Phoenix Digital Group LLC's First Set of Requests for Production dated September 16, 2022.

4. Attached hereto as **Exhibit 39** is a true and correct copy of a September 16, 2022 letter from Jacob Dini to Phil Mann regarding Bungie's second document production in this case, which included copies of Bungie's object code for *Destiny 2* and *Destiny 2: Beyond Light*, which were produced bearing Bates numbers BUNGIE\_WDWA\_0000557 and BUNGIE\_WDWA\_0000558.

5. Attached hereto as **Exhibit 40** are true and correct copies of additional excerpts from the March 23, 2023 deposition of James May.

6. Attached hereto as **Exhibit 41** are true and correct copies of excerpts from the June 23, 2023 deposition of Scott Kraemer.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 11th day of August, 2023.

/s/William C. Rava  
William C. Rava

RAVA DECL. ISO BUNGIE'S REPLY ISO  
MOT. FOR SUMMARY JUDGMENT  
(No. 2:21-cv-811-TSZ) - 2

# **EXHIBIT 37**

1 THE HONORABLE THOMAS S. ZILLY  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 BUNGIE, INC.,

11 Plaintiff,

12 v.

13 AIMJUNKIES.COM; PHOENIX DIGITAL  
14 GROUP LLC; DAVID SCHAEFER; JORDAN  
15 GREEN; JEFFREY CONWAY; JAMES MAY,

16 Defendants.

17 No. 2:21-cv-811-TSZ

18 BUNGIE, INC.'S OBJECTIONS AND  
19 RESPONSES TO DEFENDANT  
20 PHOENIX DIGITAL GROUP LLC'S  
21 FIRST SET OF INTERROGATORIES

22 **PRELIMINARY STATEMENT**

23 The objections and responses set forth below are based upon such information that is  
24 presently available to Bungie. Bungie provides these objections and responses without prejudice  
25 to its right to assert additional objections and amend or supplement any or all of the information  
contained in its responses as additional facts are ascertained, analyses are made, and research is  
completed. These objections and responses are made without waiving or intending to waive, but  
on the contrary preserving:

26 a. all assertions as to competency, relevancy, materiality, privilege, and  
admissibility as evidence for any purpose of the responses or subject matter thereof, in any  
proceeding in this action, including trial, or in any other action;

BUNGIE'S OBJ. AND RESP. TO PHOENIX  
DIGITAL'S FIRST SET OF ROGS – 1  
(NO. 2:21-CV-811-TSZ)

Perkins Coie LLP  
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Seattle, Washington 98101-3099  
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12. Bungie further objects to Definition 2 of Phoenix Digital's First Set of Requests for Production, which have been incorporated into Phoenix Digital's First Set of Interrogatories on the grounds that it is vague and ambiguous, specifically as to the meaning of the term "indirectly." For purposes of these objections and responses, Bungie interprets this definition to encompass only legal entities owned directly by Bungie.

## RESPONSES

**INTERROGATORY NO. 1:**

Identify by specific reference, (e.g., page and line number) to any documents produced by Bungie in response to Phoenix Digital’s Document Interrogatories Nos. 1-4, served June 23, 2022, any and all portions of the “Destiny...computer software code” that you contend have been “copied” by Defendants as alleged in Paragraph 105 of the Amended Complaint filed May 19, 2022.

**RESPONSE TO INTERROGATORY NO. 1:**

In addition to its General Objections, Bungie objects to this Interrogatory as premature. Despite prior representations regarding their possession of the source code for the cheat software at issue, Defendants have not produced such source code in response to Bungie's discovery requests. Bungie expressly reserves its rights to supplement this response when such source code has been produced. Bungie further objects to this request as vague, ambiguous and unduly burdensome. Identifying copied object code for *Destiny 2* by "page and line number" is not reasonably feasible or practical.

Subject to and without waiving these objections, Bungie responds as follows: Bungie contends that Defendants have made copies of the entirety of the object code for *Destiny 2*, as well as specifically copied and modified object code that corresponds to the data structures for player positioning, combatant positioning, rendering functions and the angle deltas for mouse movements. Bungie is willing to meet and confer regarding other methods to identify the copied object code.

1       Discovery, expert discovery, and Bungie's investigation into this matter is ongoing, and  
 2 Bungie reserves the right to supplement its answer to this Interrogatory as it learns more  
 3 information.

4

5 **INTERROGATORY NO. 2:**

6       Identify all "derivative works" that Bungie contends have been created, prepared and/or  
 7 distributed by Defendants as alleged in Paragraph 105 of the Amended Complaint filed May 19,  
 8 2022.

9 **RESPONSE TO INTERROGATORY NO. 2:**

10       In addition to its General Objections, Bungie objects to this Interrogatory as premature.  
 11 Despite prior representations regarding their possession of the source code for the cheat software  
 12 at issue, Defendants have not produced such source code in response to Bungie's discovery  
 13 requests. Bungie expressly reserves its rights to supplement this response when such source code  
 14 has been produced.

15       Subject to and without waiving these objections, Bungie responds as follows: Bungie  
 16 contends that Defendants have created, prepared, and/or distributed derivative works of Bungie's  
 17 *Destiny 2* copyrights in at least the following ways: incorporating software code derived from  
 18 Bungie's *Destiny 2* data structures into Defendants' *Destiny 2* cheat software; incorporating  
 19 software code that consists of reverse-engineered software code from *Destiny 2* into Defendants'  
 20 *Destiny 2* cheat software; distributing the *Destiny 2* cheat software that injects code into the *Destiny*  
 21 *2* game engine while running, thus creating a derivative work; and creating a modified display of  
 22 *Destiny 2*'s original audiovisual output.

23       Discovery, expert discovery, and Bungie's investigation into this matter is ongoing, and  
 24 Bungie reserves the right to supplement its answer to this Interrogatory as it learns more  
 25 information.

1 Dated: September 12, 2022

2 By: s/Jacob P. Dini

3 William C. Rava, Bar No. 29948

4 Jacob P. Dini, Bar No. 54115

5 **Perkins Coie LLP**

6 1201 Third Avenue, Suite 4900

7 Seattle, Washington 98101-3099

8 Telephone: +1.206.359.8000

9 Facsimile: +1.206.359.9000

10 WRava@perkinscoie.com

11 JDini@perkinscoie.com

12 *Attorneys for Plaintiff BUNGIE, INC.,*

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BUNGIE'S OBJ. AND RESP. TO PHOENIX  
DIGITAL'S FIRST SET OF ROGS – 12  
(NO. 2:21-CV-811-TSZ)

157996047.4

Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101-3099  
Phone: +1.206.359.8000  
Fax: +1.206.359.9000

## VERIFICATION OF INTERROGATORY ANSWERS

I, Edward Kaiser, am an Engineering Lead for Bungie, Inc. and I believe, based on reasonable inquiry, that the foregoing answers are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on September 12, 2022.

By: Elvi  
Edward Kaiser

BUNGIE'S OBJ. AND RESP. TO PHOENIX  
DIGITAL'S FIRST SET OF ROGS - 13  
(NO. 2:21-CV-811-TSZ)

**Perkins Coie LLP**  
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Phone: +1.206.359.8000  
Fax: +1.206.359.9000

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that they served a copy of the foregoing Bungie, Inc.'s Objections and Responses to Defendant Phoenix Digital Group LLC's First Set of Interrogatories to the following on September 12, 2022, via email at the address below:

Philip P. Mann, WSBA No. 28860  
Mann Law Group PLLC  
403 Madison Ave. N.  
Suite 240  
Bainbridge Island, WA 98110  
Email: [phil@mannlawgroup.com](mailto:phil@mannlawgroup.com)

Dated: September 12, 2022

s/ Christian W. Marcelo  
Christian W. Marcelo

**CERTIFICATE OF SERVICE  
(No. 2:21-cv-811-TSZ)**

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Phone: +1.206.359.8000  
Fax: +1.206.359.9000

# **EXHIBIT 38**

1 THE HONORABLE THOMAS S. ZILLY  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 BUNGIE, INC.,

10 Plaintiff,

11 v.

12 AIMJUNKIES.COM; PHOENIX  
13 DIGITAL GROUP LLC; DAVID  
SCHAEFER; JORDAN GREEN;  
14 JEFFREY CONWAY; JAMES MAY.,

15 Defendants.

16 No. 2:21-cv-811-TSZ

17 BUNGIE, INC.'S SUPPLEMENTAL  
18 OBJECTIONS AND RESPONSES TO  
19 DEFENDANT PHOENIX DIGITAL  
20 GROUP LLC'S FIRST SET OF  
21 REQUESTS FOR PRODUCTION

**PRELIMINARY STATEMENT**

22 The objections and responses set forth below are based upon such information that is  
23 presently available to Bungie. Bungie provides these objections and responses without prejudice  
24 to its right to assert additional objections and amend or supplement any or all of the information  
25 contained in its responses as additional facts are ascertained, analyses are made, and research is  
26 completed. These objections and responses are made without waiving or intending to waive, but  
on the contrary preserving:

a. all assertions as to competency, relevancy, materiality, privilege, and  
admissibility as evidence for any purpose of the responses or subject matter thereof, in any  
proceeding in this action, including trial, or in any other action;

BUNGIE'S SUPP. OBJ. AND RESP. TO  
PHOENIX DIGITAL'S FIRST SET OF RFPS – 1  
(No. 2:21-cv-811-TSZ)

158220504.1

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Fax: +1.206.359.9000

1 **SUPPLEMENTAL RESPONSES**

2 **REQUEST FOR PRODUCTION NO. 1:**

3 A true and correct copy of the source code for the “Destiny 2” work identified in Copyright  
4 Registration No. TX 8-933-655.

5 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

6 Subject to and without waiving its General Objections, Bungie will produce non-privileged  
7 documents responsive to this Request that are in Bungie’s possession, custody, or control, if any,  
8 that are located after a reasonably diligent search.

9 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

10 Pursuant to the parties’ September 7, 2022 meet and confer, Bungie will produce non-  
11 privileged documents sufficient to show the portions of the object code of the “Destiny 2” work  
12 identified in Copyright Registration No. TX 8-933-655 that were copied that are in Bungie’s  
13 possession, custody, or control, if any, that are located after a reasonable search.

14  
15 **REQUEST FOR PRODUCTION NO. 2:**

16 A true and correct copy of the source code for the “Destiny 2: Beyond Light” work  
17 identified in Copyright Registration No. TX 8-933-658

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

19 Subject to and without waiving its General Objections, Bungie will produce non-privileged  
20 documents responsive to this Request that are in Bungie’s possession, custody, or control, if any,  
21 that are located after a reasonably diligent search.

22 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

23 Pursuant to the parties’ September 7, 2022 meet and confer, Bungie will produce non-  
24 privileged documents sufficient to show the portions of the object code of the “Destiny 2: Beyond  
25 Light” work identified in Copyright Registration No. TX 8-933-658 that were copied that are in  
26 Bungie’s possession, custody, or control, if any, that are located after a reasonable search.

1 **SUPPLEMENTAL RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

2 Pursuant to the parties' September 7, 2022 meet and confer, Bungie will produce non-  
3 privileged documents responsive to this request that are in Bungie's possession, custody, or  
4 control, if any, that are located after a reasonable search.

5  
6  
7 Dated: September 16, 2022

By: */s/ Jacob P. Dini*

8 William C. Rava, Bar No. 29948  
9 Christian W. Marcelo, Bar No. 51193  
10 Jacob P. Dini, Bar No. 54115  
11 **Perkins Coie LLP**  
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15 Facsimile: +1.206.359.9000  
16 WRava@perkinscoie.com  
17 CMarcelo@perkinscoie.com  
18 JDini@perkinscoie.com

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BUNGIE'S SUPP. OBJ. AND RESP. TO  
PHOENIX DIGITAL'S FIRST SET OF RFPS – 8  
(No. 2:21-cv-811-TSZ)

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Seattle, Washington 98101-3099  
Phone: +1.206.359.8000  
Fax: +1.206.359.9000

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that they served a copy of the foregoing Bungie, Inc.'s Supplemental Objections and Responses to Defendant Phoenix Digital Group LLC's First Set of Requests for Production to the following on September 16, 2022, via email at the address below:

Philip P. Mann, WSBA No. 28860  
Mann Law Group PLLC  
403 Madison Ave. N.  
Suite 240  
Bainbridge Island, WA 98110  
Email: [phil@mannlawgroup.com](mailto:phil@mannlawgroup.com)

Dated: September 16, 2022

/s/ Jacob P. Dini  
Jacob P. Dini

**CERTIFICATE OF SERVICE  
(No. 2:21-cv-811-TSZ)**

**Perkins Coie LLP**  
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# **EXHIBIT 39**



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September 16, 2022

Jacob P. Dini  
JDini@perkinscoie.com  
D. +1.206.359.3832  
F. +1.206.359.4832

**VIA EMAIL**

Philip P. Mann  
Mann Law Group PLLC  
403 Madison Ave. N.  
Suite 240  
Bainbridge Island, WA 98110  
phil@mannlawgroup.com

**Re: *Bungie, Inc. v. AimJunkies.com, et al.*, No. 2:21-cv-811 (W.D. Wash.)**  
**Bungie, Inc., W.D. Wash. Document Production Vol. 2**

Dear Mr. Mann:

We are producing via LeapFile Bungie, Inc.'s second document production Volume BUNGIE\_WDWA\_002, bearing Bates Nos. BUNGIE\_WDWA\_0000481 through BUNGIE\_WDWA\_0000615. Confidential and Highly Confidential documents are marked accordingly and shall be treated as such under the Stipulated Protective Order entered in this case. Dkt. No. 60.

You will receive an email from LeapFile that will include instructions for accessing the documents. The .zip file containing BUNGIE\_WDWA\_002 is password protected, and the password is:

Gc%fdB7Ngargb\$q

Please let me know if you have any questions about how to access the production.

Sincerely,

Jacob P. Dini

JPD:jpd

# **EXHIBIT 40**

1 IN THE UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 AT SEATTLE  
4  
5 BUNGIE, INC. )  
6 Plaintiff, )  
7 vs. ) CASE NO. 2:21-cv-811-TSZ  
8 AIMJUNKIES.COM; PHOENIX )  
9 DIGITAL GROUP LLC; DAVID )  
10 SCHAEFER; JORDAN GREEN; )  
11 JEFFREY CONWAY; and JAMES )  
12 MAY, )  
13 Defendants. )

**CERTIFIED COPY**

10

11

12 ORAL VIDEOTAPED ZOOM DEPOSITION

13 JAMES MAY

14 March 23, 2023

15

16 ORAL VIDEOTAPED ZOOM DEPOSITION OF JAMES MAY,  
17 produced as a witness at the instance of the Plaintiff  
18 and duly sworn, was taken in the above-styled and  
19 numbered cause on the 23rd day of March, 2023, from  
20 7:58 a.m. to 11:45 a.m., via Zoom, before Debra K.  
21 Zebert, Registered Professional Reporter, reported by  
22 computerized stenotype machine, pursuant to the Federal  
23 Rules of Civil Procedure and the provisions stated on  
24 the record or attached hereto.

25 Job No.: 971992

1 APPEARANCES

2

3 FOR PLAINTIFF:

4 Jacob Dini, Esquire  
PERKINS COIE, LLP  
5 1201 Third Avenue, Suite 4900  
Seattle, Washington 98101  
6 206.359.8000  
JDini@perkinscoie.com

7

FOR DEFENDANT, JAMES MAY:

8

Philip P. Mann, Esquire  
MANN LAW GROUP PLLC  
403 Madison Avenue, North, Suite 240  
10 Bainbridge Island, Washington 98110  
206.855.8839  
11 phil@mannlawgroup.com

12

ALSO PRESENT:

13

14 Scott Norton, Videographer  
James Barker, In-house Counsel, Bungie, Inc.  
Ed Kaiser, PhD

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Bungie, Inc. vs Aimjunkies.com, et al.

James May 03/23/2023

1

THE VIDEOGRAPHER: Good morning, everyone.

2 Here begins the remote deposition of James May in the  
3 matter of Bungie, Inc. versus AimJunkies.com et al.

4 This case is in the United States District Court,  
5 Western District of Washington, at Seattle. The case  
6 number is 2:21-CV-811-TFZ. Today's date is Thursday,  
7 March 23rd, 2023, and the current time is 7:58 a.m.  
8 Pacific time.

9 This is a remote deposition through Zoom  
10 videoconferencing. Our videographer is Scott Norton,  
11 appearing on behalf of Centext Litigation Services.  
12 Would counsel please introduce yourselves, state whom  
13 you represent.

14 MR. DINI: My name is Jacob Dini. I'm  
15 counsel for Bungie. I'm also joined today by in-house  
16 counsel, James Barker -- or in-house counsel for Bungie.

17 MR. MANN: My name is Philip Mann. I'm  
18 here on behalf of Mr. May.

19 THE VIDEOGRAPHER: Thank you both. Our  
20 reporter today is Kathy Zebert, with Centext. Would the  
21 reporter please swear in our witness.

22 JAMES MAY,

23 having been first duly sworn, testified as follows:

24 \*\*\*

25 EXAMINATION

1 accessed your external hard drive?

2 A. Yes.

3 Q. What was that based on?

4 A. The documents that were provided by Bungie.

5 Q. Anything else?

6 A. They could have accessed anything on that drive  
7 just -- other than the files if they were able to access  
8 that file -- or those files. They could have poked  
9 around any file they wanted to on that drive.

10 Q. Was there any damage to your external hard  
11 drive as a result of Bungie's alleged access to it?

12 A. No.

13 Q. Were you ever unable to use that external hard  
14 drive after Bungie accessed it?

15 A. No.

16 Q. Do you have any reason to believe that Bungie's  
17 access to your -- alleged access to your hard drive  
18 affected the performance of that hard drive?

19 A. No.

20 Q. Do you still have that hard drive?

21 A. Yes.

22 Q. Are the files on that external hard drive that  
23 you allege Bungie accessed in the same condition that  
24 they were after Bungie allegedly accessed them?

25 A. I believe so.

1       Q.    Have you modified any of the files on that hard  
2 drive in the time since Bungie allegedly accessed the  
3 hard drive?

4       A.    Yes, I've modified other files, but not the  
5 ones that I produced to Bungie.

6       Q.    So, Mr. May, why did you get new hardware if  
7 there was nothing wrong with the old hardware, as a  
8 result of Bungie's alleged access?

9       A.    Because they could track my old hardware  
10 easily. Anybody can. It was out there for anybody to  
11 see through this whole thing.

12      Q.    Did you find any indications that Bungie was  
13 tracking any of your hardware on the computer itself?

14      A.    They said they had hardware ID -- hardware  
15 ID-banned me, so they were definitely tracking my  
16 hardware.

17      Q.    Did that hardware apply to your monitor?

18      A.    Yes.

19      Q.    So you believe that Bungie was -- was tracking  
20 your -- excuse me. So you believe that Bungie was  
21 monitoring your hardware -- or your -- your monitor?

22      A.    I believe that Bungie was monitoring any  
23 hardware, as a lot of companies do. They monitor  
24 hardware.

25      Q.    Okay. Mr. May, can you please identify every

1 technological measure that you allege Bungie

2 circumvented to access your computer?

3 A. Yeah, sure. They got around the firewall by  
4 already being on my computer when the game was loaded.  
5 I had a VPN on. I mean, I had several passwords on my  
6 work folders.

7 Q. Any others besides firewall, VPN and passwords?

8 A. Firewalls, VPN, passwords. I can't think of  
9 any others off the top of my head.

10 Q. So the only technological measures that you  
11 allege Bungie circumvented in accessing your computer  
12 are firewalls, VPN and passwords?

13 A. Correct. Those are the ones I believe right  
14 now. There could be -- well, I don't know of any other  
15 technological measures right now that I had in place.  
16 So I believe that's it.

17 Q. Do you -- that was going to be my next  
18 question. Do you have any technological measures other  
19 than those three that protect access to your computer?

20 A. I believe those are the only ones.

21 Q. Do you have any technological measures other  
22 than firewalls, VPNs or passwords that protect any files  
23 or folders on your computer?

24 A. Yes, I have passwords for my work folders.

25 Q. Okay. So -- but that's encompassed within the

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1

## REPORTER'S CERTIFICATE

2

ORAL VIDEOTAPED ZOOM DEPOSITION OF JAMES MAY

3

March 23, 2023

4

5 I, the undersigned Registered Professional Reporter,  
6 certify that the facts stated in the foregoing pages are  
7 true and correct.

8 I further certify that I am neither attorney or  
9 counsel for, related to, nor employed by any parties to  
10 the action in which this testimony is taken and,  
11 further, that I am not a relative or employee of any  
12 counsel employed by the parties hereto or financially  
13 interested in the action.

14 SUBSCRIBED AND SWORN TO under my hand on this the  
15 28th day of March, 2023

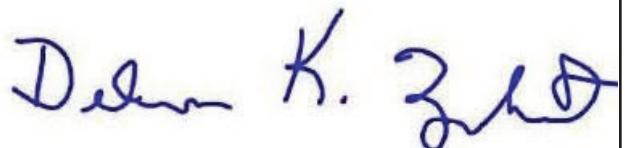
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19

20



21 Debra K. Zebert, BS, RPR, CSR  
RPR No. 839015  
22 Expiration: 12/31/23

23

24

25

**EXHIBIT 41**

**FILED UNDER SEAL**